

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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DR. STEPHEN E. WILLIAMS, DR.  
JAMES P. LALLEY, DR. HILARY A.  
LOCHTE, DR. JAMIE N. DEWATERS,  
DR. NANCY KACZMAREK, DR.  
JULIE H. CARTER,

Plaintiffs,

v.

D'YOUVILLE COLLEGE, JBCN  
EDUCATION, INC., CHALKBOARD  
SCHOOL SOLUTIONS, LLP, NATION  
OF LEARNING EXCELLENCE, DOES  
1-5,

Defendants.

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21-CV-1001 (JLS) (LGF)

**DECISION AND ORDER**

Plaintiffs Dr. Stephen W. Williams, Dr. James P. Lalley, Dr. Hilary A. Lochte, Dr. Jamie N. DeWaters, Dr. Nancy Kaczmarek, and Dr. Julie H. Carter commenced this action on September 6, 2021, seeking relief under the Copyright Act, the Lanham Act, New York Civil Rights Law, New York General Business Law, and New York common law for Defendants' conduct related to alleged unauthorized use of Plaintiffs' curriculum and materials and misappropriation of Plaintiffs' likenesses. Dkt. 1. Defendant D'Youville College<sup>1</sup> moved to dismiss all eight of

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<sup>1</sup> Defendant JBCN Education, Inc., moved separately to dismiss the complaint, pursuant to Federal Rules of Civil Procedure 12(b)(2), (5), and (6). Dkt. 33. That motion remains pending. No other Defendant has responded to the complaint.

Plaintiffs' claims under Federal Rule of Civil Procedure 12(b)(6). Dkt. 17. Plaintiffs opposed Defendant D'Youville's motion (Dkt. 22), and Defendant D'Youville replied in further support (Dkt. 25). With permission, Plaintiffs filed a sur-reply. Dkt. 29.

This Court referred the case to United States Magistrate Judge Leslie G. Foschio for all proceedings under 28 U.S.C. §§ 636(b)(1)(A)–(C). Dkt. 18. On September 29, 2022, Judge Foschio issued a Report and Recommendation (R&R), recommending that this Court: (1) grant Defendant D'Youville's motion to dismiss in its entirety; and (2) grant Plaintiffs leave to amend certain claims.

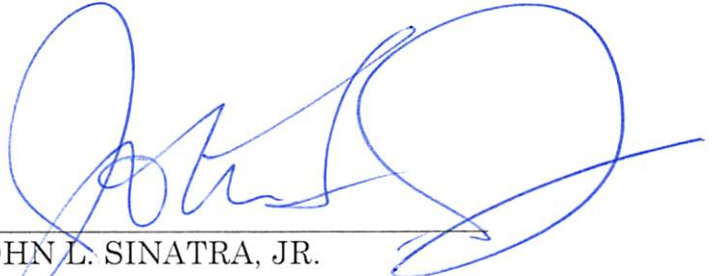
Neither party objected to the R&R, and the time to do so has expired. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2). A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a *de novo* review of those portions of a magistrate judge's recommendation to which a party objects. *See* 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. *See Thomas v. Arn*, 474 U.S. 140, 149–50 (1985).

Though not required to do so here, this Court nevertheless reviewed Judge Foschio's R&R. Based on that review, and absent any objections, the Court accepts and adopts the R&R.

For the reasons stated above and in the R&R, the Court **GRANTS** Defendant D'Youville's motion to dismiss (Dkt. 17) in its entirety. The Court **GRANTS** Plaintiffs leave to amend solely as to their first, second, third, and fourth claims by February 17, 2023. The Court refers the case back to Judge Foschio for further proceedings, consistent with the referral order at Dkt. 18.

SO ORDERED.

Dated: January 27, 2023  
Buffalo, New York



JOHN L. SINATRA, JR.  
UNITED STATES DISTRICT JUDGE